

HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SIERRA CLUB, *et al.*,

Plaintiffs,

and

THE SPOKANE TRIBE OF INDIANS,

Plaintiff-Intervenor,

v.

REGIONAL ADMINISTRATOR OF THE
ENVIRONMENTAL PROTECTION
AGENCY, CHRIS HLADICK, *et al.*,

Defendants,

and

SPOKANE COUNTY; KAISER
ALUMINUM WASHINGTON LLC; and
STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

Defendant-Intervenors.

No. C11-1759BJR

JOINT STATUS REPORT

The Parties in this action — Plaintiffs Sierra Club and Center for Environmental Law &
Policy, Defendants Regional Administrator of the Environmental Protection Agency Chris

JOINT STATUS REPORT - 1
Case No. C11-1759BJR

David J. Kaplan.
United States Department of Justice
Environmental Defense Section
P.O. Box 7611
Washington D.C. 20044

1 Hladick, et al., (collectively “EPA”), Intervenor-Plaintiff Spokane Tribe of Indians (the “Tribe”),
2 and Intervenor-Defendants Spokane County, Kaiser Aluminum Washington LLC, and State of
3 Washington, Department of Ecology (“Ecology”) — jointly submit this status report in
4 accordance with the Court’s January 17, 2017 Minute Order. Doc. No. 184. That Order granted
5 the unopposed motion filed by Plaintiffs and the Tribe to stay this case and directed the Parties to
6 file a status report every 120 days. *Id.*

8 As previously explained, Ecology is undertaking the process to reissue National Pollutant
9 Discharge Elimination System (“NPDES”) permits for certain direct dischargers of, among other
10 pollutants, total PCBs into the Spokane River. Doc. No. 183 ¶ 4. On November 28, 2016, EPA
11 promulgated revisions to water quality criteria for toxic pollutants, including revisions to the
12 water quality criteria for total PCBs. Ecology is continuing to consider how to address the
13 revised water quality criteria in NPDES permits for Spokane River dischargers. In this regard,
14 Ecology is continuing to develop a permitting strategy. In addition, based on an administrative
15 petition for reconsideration, which EPA granted on August 3, 2018, EPA is in the process of
16 reconsidering certain water quality criteria for toxic pollutants, including those for total PCBs,
17 that were promulgated on November 28, 2016.

20 The Spokane River Regional Toxics Task Force is continuing to implement its
21 *Comprehensive Plan to Reduce Polychlorinated Biphenyls (PCBs) in the Spokane River* (Nov.
22 29, 2016), including with the support of the Washington legislature’s \$310,000 appropriation for
23 the current biennium. As reported previously, the implementation actions in the Comprehensive
24 Plan include: identification, evaluation, and cleanup of known PCB contamination (specifically
25 impacting groundwater); implementation of stormwater controls and management activities;
26 product testing and establishing procurement and purchasing standards for products and
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packaging containing PCBs; support of green chemistry research; public outreach and education; support of rulemaking to eliminate or reduce inadvertently generated PCBs; research on emerging end of pipe treatment technologies; building demolition and renovation best management practices; and other studies to address data gaps. Ecology and the Task Force are also independently assessing in-stream ambient concentrations for PCBs. Since our prior status report, the Task Force has taken or begun the following actions:

- approved a memo describing the results of research into groundwater wells upgradient of the Kaiser facility.
- approved the white paper prepared by Northwest Green Chemistry regarding inadvertent PCBs in pigments.
- presented preliminary data from the August 2018 synoptic (water column) survey at the December Task Force meeting, with the expectation that a draft report will be available this spring.
- developing a centralized database where all relevant data can be stored and accessed.

As previously explained, Plaintiffs and the Tribe may voluntarily dismiss this case based in part upon the terms that Ecology includes in the relevant NPDES permits upon renewal. *See* Doc. No. 183 ¶ 5.

Accordingly, the Parties continue to believe that proceedings in this case should remain stayed. Therefore, no action is required of the Court at this time, and the Parties will file as appropriate a status report within the next 120 days in accordance with the Court's Minute Order.

Respectfully submitted by:

SMITH & LOWNEY, PLLC

By: /S/ Richard Smith
 Richard A. Smith, WSBA #21788
 Attorneys for Plaintiff
 2317 E. John St., Seattle, WA 98112

1 Tel: (206) 860-2883
2 Fax: (206) 860-4187
3 rasmithwa@igc.org

4 By: /S/ David Kaplan
5 DAVID J. KAPLAN
6 Attorneys for Federal Defendants
7 United States Department of Justice
8 Environmental Defense Section
9 P.O. Box 7611
10 Washington, DC 20044
11 (202) 514-0997
12 David.kaplan@usdoj.gov

13 ANNETTE L. HAYES
14 United States Attorney
15 REBECCA S. COHEN, WSBA #31767
16 Assistant United States Attorney
17 United States Attorney's Office
18 700 Stewart Street, Suite 5220
19 Seattle, Washington 98101-1271
20 Phone: 206-553-7970
21 Rebecca.cohen@usdoj.gov

22 FOSTER PEPPER PLLC

23 By: /S/ Lori Gregory
24 Lori Terry Gregory, WSBA #22006
25 Attorneys for Intervenor Spokane County
26 1111 Third Ave., Ste. 3400, Seattle, WA 98101
27 (206) 447-4400
28 terrl@foster.com

29 PERKINS COIE LLP

By: /S/ Margaret Hupp
Margaret C. Hupp, WSBA #43295
Attorneys for Intervenor Kaiser Aluminum Washington LLC
1201 Third Ave., Ste. 4800, Seattle, WA 98101
(206) 359-8000
MHupp@perkinscoie.com

BOB FERGUSON
Attorney General

By: /S/ Ronald Lavigne
Ronald L. Lavigne, WSBA #18550

1 Attorneys for Intervenor State of Washington, Dept. of Ecology
2 P.O. Box 40117, Olympia, WA 98504
3 (360) 586-6751
4 RonaldL@atg.wa.gov

5 /S/ Theodore Knight
6 Theodore Clare Knight, WSBA# 39683
7 Attorney for the Spokane Tribe of Indians
8 9121 NE Briar Rose Lane
9 Bainbridge Island, WA 98110
10 509-953-1908
11 Email: tedk@spokanetribe.com
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing filing was electronically filed with the Clerk of the Court on February 15, 2019, using the CM/ECF system, which will send notification of said filing to the attorneys in this case registered with the Court's CM/ECF system.

/S/ David Kaplan